***THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**And**

***THE HON'BLE MR JUSTICE D.APPA RAO**

+WRIT PETITION NO.25118 OF 2004

%Dated 26.04.2006

#G.Suryanarayana Rao, S/o.Mallaiah.

**...PETITIONER**

VERSUS

$1. The Commissioner of Endowments, Endowments Department, Government of A.P., Hyderabad and one other.

**...RESPONDENTS**

! Counsel for Appellant: Mr.G.Vidyasagar.

^ Counsel for the Respondents: G.P. for Services II.

< GIST:

>HEAD NOTE:

?Cases Referred.

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**And**

**THE HON'BLE MR JUSTICE D.APPA RAO**

WRIT PETITION NO.25118 of 2004

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26th April 2006

Between:

G.Suryanarayana Rao, S/o.Mallaiah.

**...PETITIONER**

AND

1. The Commissioner of Endowments, Endowments Department, Government of A.P., Hyderabad.
2. State of A.P., rep.by its Principal Secretary, Revenue (Endowments) Department, Secretariat, Hyderabad.

**...RESPONDENTS**

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**And**

**THE HON'BLE MR JUSTICE D.APPA RAO**

WRIT PETITION NO.25118 OF 2004

**ORDER:** (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri G.Vidyasagar, the learned counsel appearing on behalf of the petitioner and the learned Government Pleader for Services II appearing on behalf of the respondents.

The petitioner, who has been working as an Executive Officer under the first respondent, files this Writ Petition, *inter alia*, seeking a mandamus declaring the dismissal proceedings dated 03.10.2002 as violative under Articles 14, 16 and 21 of the Constitution of India, apart from being in the teeth of the mandate as per Rule 20 of the A.P. Civil Services Code (Classification, Control and Appeal) Rules, 1991 ('the Rules' for brevity) for want of enquiry and consequently seeking to set aside the proceedings dated 03.10.2002 issued by the first respondent dismissing the appellant from service and the order dated 07.05.2004 in O.A.No.9816 of 2002 on the file of the A.P. Administrative Tribunal ('APAT' for brevity) dismissing the application filed under Section 19 of the Administrative Tribunals Act, 1985 and for issuance of other consequential directions.

Having regard to the substantial plea taken in the Writ Petition as to the want of enquiry as provided under Rule 20 of the Rules, the facts of the case, in brief, are that the petitioner was initially appointed in April 1970 as Executive Officer Gr.III and subsequently, he was kept in-charge of Sri Sitarama Swamy Temple, Gundugolanu from 04.12.1992 to 06.07.1998. On certain allegations in regard to misappropriation

of the amounts belonging to the Temple, proceedings have been initiated against the Chairman of the Institution, but ultimately, the Chairman had paid the amount of Rs.1,31,000/- (Rupees one lakh thirty one thousand only) on 06.02.1995. Even the criminal case launched against the said Chairman in C.C.No.3 of 1995 on the file of the II Additional Judicial First Class Magistrate, Eluru ended in acquittal. The case of the petitioner is that, thereafter, the present proceedings for disciplinary action were initiated against him by issuing a charge memo on 10.09.1999 with self same allegations. The petitioner filed a detailed explanation on 16.03.2000 to the said charge memo denying the entire allegations. The case of the petitioner is that in spite of the flat denial, no enquiry was conducted in his presence by giving any notice or opportunity to him. However, on the basis of the said charge memo and the explanation filed by the petitioner alone, the Enquiry Officer straight away submitted a report on 25.11.2000. Thereafter, the petitioner was given a final show cause notice on 16.01.2001, against which the petitioner filed an explanation on 20.01.2001, once again denying the entire charge. This was simply followed up by the dismissal proceedings dated 03.10.2002. Challenging the same, the petitioner approached APAT through O.A.No.9816 of 2002, which was dismissed. Hence, the Writ Petition.

Sri G.Vidyasagar, the learned counsel appearing on behalf of the petitioner, apart from contending on merits and the correctness of the allegations, principally submits that subsequent to filing of petitioner's explanation to the charge memo dated 10.09.1999, the Enquiry Officer did not conduct any enquiry as contemplated under Rule 20 of the Rules and therefore, the dismissal proceedings are totally vitiated.

Evidently, he has filed a report dated 25.11.2000 purely on the basis of the charge memo dated 10.09.1999 and explanation dated 16.03.2000. Subsequently, show cause notice dated 16.01.2001 was issued to which the petitioner filed explanation dated 20.01.2001 but all those resulted in major punishment of dismissal of the petitioner from the services. In view of the seriousness of the allegations made against the petitioner, it mandates on the part of the respondents to conduct an enquiry after giving due notice and opportunity, without which, the entire procedings would be illegal.

The learned Government Pleader for Services II appearing on behalf of the respondents sought to sustain the impugned action on the ground that the explanations filed by the petitioner have been duly considered and it is only thereafter, the dismissal order has been passed and therefore, no irregularity or illegality as such can be pointed out.

Having heard the submissions on either side and on perusal of the material available on record, the point, which narrows down for consideration in this Writ Petition, is as to whether on the facts and circumstances of the case, the impugned dismissal from service is vitiated under the law, for want of enquiry.

There is no dispute to the aforesaid chequered events, which led to the dismissal order dated 03.10.2002. It is to be noticed conspicuously that there is no serious dispute in regard to the fact that subsequent to filing of the explanation on 16.03.2000 for the charge memo dated 10.09.1999; the Enquiry Officer did not conduct any enquiry. It is also the case of the petitioner that no notice or otherwise was given for such enquiry nor any attempt on his part to thwart the same.

Admittedly, the Enquiry Officer filed his report on 25.11.2000 but it was only followed up by a show cause notice dated 16.01.2001 to which the petitioner filed an explanation on 20.01.2001.

Be that as it may, without going into merits and even according to the findings arrived at by the Enquiry Officer, the fact remains that the ultimate conclusion of dismissal is admittedly without any enquiry. In this connection, it is relevant to note Sub Rule (7) of the Rule 20, which is the comprehension provides procedure comprehensively, which reads as follows:

> "The Government Servant shall appear in person before the inquiring authority on such day and at such time without fifteen working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding fifteen days, as the inquiring authority may allow."

On a reading of the afore said Rule and the entire procedure as contemplated in the said provision in its entirety in respect of the disciplinary action to be taken, necessarily the Enquiry Officer has to conduct an enquiry subsequent to filing of the explanation by allowing the department to prove the allegations against him and to give an opportunity to rebut the same, by producing any evidence or material or otherwise from both sides. Therefore, merely adhering to issuance of notices, would be empty formality and would be contrary to law and clearly a negation of due procedure as contemplated under the law.

In this case, the learned counsel for the petitioner placed reliance on the orders dated 03.12.2003 of the Division Bench of this Court in W.P.Nos.2624 and

2625 of 2002 wherein this Court held that the procedure contemplated there under holding an enquiry is mandatory and any breach there of would totally vitiate the entire proceedings. We are in agreement with the ratio laid down there under.

Thus, on a reading of the aforesaid provision, it is amply made clear that non-conducting an enquiry is a irreversible and incurable error which totally vitiates the disciplinary action and the final orders passed imposing punishment of dismissal from service. Accordingly, the impugned action cannot be upheld but liable to be set aside.

In the circumstances, the Writ Petition is allowed. The orders dated 03.10.2002 issued by the first respondent dismissing the appellant from service and the order dated 07.05.2004 in O.A.No.9816 of 2002 on the file of the A.P. Administrative Tribunal ('APAT' for brevity) dismissing the application filed under Section 19 of the Administrative Tribunals Act, 1985 are set aside. Consequently, the said application filed before the APAT stands allowed. It is needless to mention that it is open for the respondents herein to take steps afresh for passing fresh orders after due process and holding a regular enquiry by giving notice and opportunity to both the sides. It is further needless to mention that all the period i.e., from the date of dismissal from the services to till date, shall be treated as if the petitioner is under suspension and he shall be paid all such allowances to which he is entitled under the law. Having regard to the fact that the petitioner is left with short span of service, the respondents are directed to complete the enquiry and pass orders independently within a period of three months from the date of receipt of a copy of this order. We make it clear that we have not expressed any opinion on merits, which shall be in

the exclusive domain of the authorities. No costs.

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**(B.PRAKASH RAO, J)**

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**(D.APPA RAO, J)**

26th April 2006

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